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SUMMARY RECORD OF THE 1311th MEETING

Held at Headquarters, New York,
on Monday, 4 April 1994, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of El Salvador (continued) (CCPR/C/51/Add.8 and HRI/CORE/1/Add.34)

1. At the invitation of the Chairman, Mr. Melendez and Miss Villalta (El Salvador) took places at the Committee table.

2. Mr. MELENDEZ (El Salvador), continuing his responses to the questions put by the Committee under section 1 of the list of issues acknowledged that the report placed disproportionate emphasis on institutional and legal reforms and contained little input from relevant institutions in El Salvador, including the Office of the Procurator for the Protection of Human Rights (para. 57 (d) of the core document). His delegation would recommend that future reports should reflect the views of not only governmental agencies but also non-governmental organizations and the Procurator for the Protection of Human Rights.

3. Moreover it did not answer many of the questions which had been asked following the submission of the first periodic report because of the limited human resources available for human rights matters in the Ministry of Foreign Affairs and the lack of experience of the personnel in question.

4. The principal obstacle to full compliance with the provisions of the Covenant was the situation of armed conflict that had prevailed from 1979 to 1991. The human rights situation had been gradually improving thanks to the monitoring activities of the international community and the measures that had been adopted by the Salvadorian Government, and the improvement had been particularly marked since the signing of the Peace Agreement in 1992.

5. The declining incidence of human rights violations had been accompanied by an opening up of political and ideological spaces in El Salvador. Leftist groups were now permitted to participate in the electoral process on the same footing as other groups and an independent commission had been established to investigate the activities of irregular groups, including the controversial death squads. It had just been announced that the United States Government would grant the commission access to confidential files relating to the activities of such groups.

6. Since taking office in 1989, the Government of President Cristiani had sought to find a political solution to the problems of El Salvador. The amnesty law, which was promulgated in 1993, was designed to put an end to the polarization of Salvadorian society and to promote national reconciliation. El Salvador, however, lacked the resources to successfully complete its transition from conflict to peace. The resources which had been pledged by the international community for a National Reconstruction Plan had not materialized and many of the projects planned had not been implemented. Large numbers of the security forces, for example, had been disbanded on the understanding that

(Mr. Melendez, El Salvador)

the international community would provide resources for the training of a new force, the National Civil Police. The failure to implement that training programme had resulted in a marked increase in the level of delinquency in the country.

7. While dramatic progress could not be expected overnight, the peace process and the trend towards greater protection of human rights in El Salvador were irreversible. Salvadorians would never countenance a return to the conflicts of the 1980s and the Government would maintain its dialogue with the Committee. Despite the shortcomings of the judicial system, the recent changes in the Constitution, particularly the provisions bringing the armed forces under civilian authority, represented a major break with the past.

8. Miss VILLALTA (El Salvador), replying to the question concerning the place of the Covenant within the hierarchy of domestic norms, said that the Constitution took precedence over all other norms. Next came international treaties which had been duly ratified by the competent bodies in El Salvador. They took precedence over secondary laws, such as Codes, Acts and other statutory instruments, and complemented the human rights provisions of the Constitution. Other supplementary sources of law, such as legal precedents, occupied a lower place in the hierarchy.

9. The Office of the Procurator for the Protection of Human Rights was created following the signing of the peace agreement in 1992 and was patterned after the office of ombudsman found in certain other societies. The Office of the Procurator for the Protection of Human Rights, together with those of the Attorney General of the Republic (Fiscalía General) and the Prosecutor-General of the Republic (Procuraduría General), comprised the Department of Public Prosecutions, which was one of the institutions charged with guaranteeing the effective exercise of human rights and fundamental freedoms in El Salvador. Representatives of the Procurator for the Protection of Human Rights visited detainees to investigate allegations of human rights abuses. However, while he was authorized to issue reports and make recommendations, the Procurator had no power to impose penalties. Nevertheless, the establishment of that Office represented a significant strengthening of the machinery for the protection of human rights in El Salvador.

10. On the question of judicial reforms, she reported that the budget allocated to the judicial branch had been increased, permitting computerization of some operations and construction of dormitories for judicial officials, who now worked on a shift system providing access to the judicial system on a 24-hour basis. Thanks to those innovations, it was now possible to prevent violations of the provision that a person should not be detained for longer than 72 hours without being charged. In addition, writs of habeas corpus could now be filed with the Supreme Court. A network of Representatives of the Prisons Inspectorate (paras. 181-183 of the report) had been established in 1989 to monitor the situation of accused persons and the progress made in dealing with their cases. The network was currently operational in four prisons and at a

(Miss Villalta, El Salvador)

number of police stations. Unfortunately, lack of resources prevented further expansion of its activities. Lack of resources had also stymied efforts to increase the salaries of judges and magistrates with a view to making them more independent and more resistant to corruption. Human rights were now part of the curriculum of all armed forces training courses.

11. On the question of the equality before the law of adopted children and children born out of wedlock, she drew attention to paragraph 243 of the report (CCPR/C/51/Add.8), adding that a new Family Code had been adopted to replace the outdated provisions of the Civil Code and would be implemented in October 1994 when the first batch of family judges was due to complete their training and take their oath of office.

12. On the subject of the remedy of unconstitutionality, she said that the Constitution provided that, in response to a petition lodged by a citizen, the Supreme Court of Justice was competent to declared the unconstitutionality of laws, decrees and regulations, in form and in content, generally and with binding effect.

13. Mr. AGUILAR, referring to a statement made earlier by Mr. Melendez, said that it was for the Committee, not the delegation, to determine the status of the report. The Committee had determined that the report should be considered as the second report of El Salvador, not as a combined second and third report.

14. He also had certain concerns with regard to the right enjoyed by citizens to the remedy of unconstitutionality. In his view, such a right should be enjoyed by all persons in El Salvador and not just citizens of that country, in accordance with the provisions of articles 26 and 27 of the Covenant.

15. Mr. PRADO VALLEJO asked exactly what arrangements had been made to ensure that the new National Civil Police was composed of members without any links with the old security forces, as mandated by the Peace Agreement, in view of the concern expressed in May 1993 by the United Nations Secretary-General over the apparent inclusion of former security police in the new force.

16. Mr. BRUNI CELLI said that he was not satisfied with the answer regarding the amnesty law given earlier by the representative of El Salvador, who had simply said that a political situation had required a political decision, without offering any further explanation. The amnesty law unquestionably denied a number of rights guaranteed under the Covenant and, according to article 144 of the Constitution, in case of conflict between a treaty and a law, the treaty must prevail. The right to ascertain the truth about the violation of basic human rights such as those guaranteed under article 2 of the Constitution, for instance, had been precluded by the amnesty law. El Salvador's ratification of the Covenant - a free and sovereign decision by which it had limited its own sovereignty in the matter of human rights - must override any subsequent political decision.

17. Mr. MELENDEZ (El Salvador) agreed that there were legal contradictions between El Salvador's domestic law and international law. As a general rule, Governments fully recognized the implications of international human rights or other instruments only at times of conflict in their societies. At other times, they gave more emphasis to political considerations.

18. Regarding the composition of the National Civil Police, he did recall that initially the Secretary-General had expressed concern that certain undesirable elements were being integrated into the police force - specifically, there had been a problem with the narcotics police - but as a result of constant contacts and understandings on the matter between the representatives of the Secretary-General and the Salvadorian authorities, there should be full compliance on that point with the Peace Agreement by October 1994.

19. Mr. FRANCIS said that the representatives of El Salvador should provide the Committee with a considered response to the questions raised in the Committee regarding the amnesty law, because that crucial issue could not be glossed over. No country could so comprehensively reject an obligation arising from a treaty.

Right to life, liberty and security of the person and treatment of prisoners and other detainees (articles 6, 7, 9 and 10 of the Covenant) (section II of the list of issues)

20. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of El Salvador, namely: (a) detailed information on measures taken to investigate cases of disappearances, extra-judicial execution, torture and other human rights violations connected with administrative detention, to punish those found guilty and to prevent the recurrence of such acts, and any difficulties encountered; (b) progress achieved in securing control over all detention centres in the country through the establishment of the new Department for Information concerning Detained Persons; (c) frequency with which the death penalty had been imposed and carried out in El Salvador since the consideration of the initial report and the nature of the crimes involved; (d) measures taken by the authorities to ensure the strictest observance of article 7 of the Covenant; (e) any precise rules governing detention by the police established pursuant to the studies referred to in paragraph 151 of the report; (f) any measurable progress as a result of the adoption on 29 May 1991 of a law addressing problems connected with the length of pre-trial detention; (g) extent to which the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with, and scope of the various problems in the prison system, especially overcrowding of the principal detention centres, as well as steps envisaged to address them; (h) situation of any persons imprisoned during the years of conflict and still being held in detention centres.

21. Miss VILLALTA (El Salvador), referring to sections II (a) and II (f) of the list of issues, said that a series of steps had been taken to avoid a repetition of the occurrences in question. Foremost had been the establishment of the National Civil Police as a professional, apolitical body independent of the armed forces to replace the security forces as the body responsible for public safety and for administrative detentions. Consequently, the police were the ones who must protect the human rights of those under arrest.

(Miss Villalta, El Salvador)

22. Article 13 of the Constitution governed administrative detentions, which could not exceed 72 hours. Another new guarantee had been the establishment of the Department for Information concerning Detained Persons, whose functions were described in paragraphs 146 and 147 of the report. In addition, the Office of the Procurator for the Protection of Human Rights had an obligation to ensure that the basic human rights of detainees were respected and that they were properly treated, and it could initiate court action on behalf of those whose rights had been violated. The network of Representatives of the Prisons Inspectorate also was responsible for preventing prisoners from being subjected to torture or inhuman treatment and ensuring full observance of their human rights.

23. The Office of the Attorney General (Fiscalía General de la Republica) had been expanded to include a section for the investigation of human rights, which dealt with pre-trial detentions. A new department under the Ministry of Justice also monitored treatment of detainees. The Legislative Assembly as well had set up a Commission on Justice and Human Rights (para. 158 of the core document), which could request the President to dismiss the security or intelligence chiefs when clear human rights violations had been found.

24. With regard to section II (b) of the list of issues, the Department for Information concerning Detained Persons had been operating for four years and had been responsible for the progress indicated in paragraphs 149 and 150 of the report and for ensuring that, as a routine procedure, detentions did not exceed the 72-hour limit prescribed by the Constitution. The Department kept a complete computerized record of all prisoners currently in detention, which it communicated to the Office of the Procurator for the Protection of Human Rights, which could then apply to the Constitutional Section of the Supreme Court of Justice for a writ of habeas corpus for any individual. That procedure had in recent years shortened the pre-trial detention periods of prisoners.

25. With regard to section II (c) of the list of issues, in accordance with article 27 of the Constitution, the death penalty could be imposed only for military offences in time of war, and its imposition was regulated by articles 8 to 10 of the Code of Military Justice.

26. As to the strict observance of article 7 of the Covenant (section II (d) of the list of issues), the new departments established in the Judiciary and the Legislature to safeguard human rights had been referred to earlier. The chief responsibility for the treatment of prisoners, however, rested with the Ministry of Justice and its Directorate General for Penal and Rehabilitation Centres (para. 160 of the report). The General Rehabilitation Act was the basic legislation governing prison conditions, article 5 of which excluded the use of torture or inhuman procedures and provided that any prison personnel engaging in such acts should be disciplined; article 58 further provided that disciplinary measures used against prisoners must not affect their health or dignity, and article 70 prohibited the use of violence and verbal or physical abuse of prisoners.

(Miss Villalta, El Salvador)

27. Concerning section II (e) of the list of issues, in addition to the specific rules governing detention set out in articles 12 and 13 of the Constitution and the rights guaranteed detainees under articles 143 and 137 of the Code of Penal Procedure, the recent revision of article 46 of the Code specified all rights of accused persons being held in any type of penal centre. Moreover, the Judiciary had agreements with several universities by which prospective graduates of their faculties of law served as pro bono defence counsel for defendants who could not afford legal costs.

28. With regard to section II (g), measures for the rehabilitation of prisoners were being taken by the judiciary, the Ministry of Justice, the Office of the Attorney General and the Office of the Procurator for the Protection of Human Rights. Reference had already been made to the Office of the Judge Advocate, and to the computerized list of prisoners. Prison overcrowding had been eased by implementation of the emergency act to deal with the problem of unconvicted detainees (paras. 176-179 of the report).

29. In El Salvador there were three central penitentiaries and 11 detention centres. One of the latter was specifically for women and another for minors; all the others were for men, who were classified into different groups such as homosexuals, drug addicts, members of the armed forces, and highly and dangerous criminals. The Ministry of Justice was responsible for all the penitentiary centres; it also administered two hospital blocks, one in a psychiatric hospital and another in a general hospital.

30. El Salvador's budget for the prison sector was very small; for 1993, the budget for some 6,000 prisoners had been about $3,420,620; from that budget, the daily food allowance per head had been the equivalent of 40 cents a day for men and 57 cents a day for women and children. In the medical branch there were 33 doctors, 6 dentists, 23 psychologists and 1 psychiatrist. Her Government recognized the need for trained prison staff, who should also be aware of human rights issues; there was a prison staff training school but it needed to be expanded. El Salvador also needed more penitentiary centres so as to alleviate overcrowding. The women's penitentiary at Ilopango had been severely damaged by an earthquake in 1986 and as a result many women were being placed elsewhere and were not able to benefit from the special programmes provided for women prisoners, many of whom had young children. At the Tonacatepeque Juvenile Reeducation Centre there were various programmes for the rehabilitation of juvenile delinquents.

31. At the detention centres for men there were many problems because some of the prisoners were drug addicts or suffered from AIDS or other diseases and others were highly dangerous. Recently there had been mutinies in the Morazan prison for the most dangerous criminals. Measures were being taken to rehabilitate criminals; occupational training was provided as well as special treatment for the mentally ill and drug addicts; however, all the programmes were hampered by the problems of overcrowding. Her Government's budget was very small; international assistance would be welcome to alleviate the problems of prisoners, establish new centres and repair the serious damage to the women's centre.

(Miss Villalta, El Salvador)

32. On section II (h), she said that persons who had been deprived of their liberty as a result of the armed confrontations were no longer in detention centres because they had benefited from the amnesty law of 1993; thus there were no longer any political prisoners in El Salvador's prisons.

33. Mr. AGUILAR said that the representatives of El Salvador had provided very little information about the actual situation in El Salvador and had added very little to the information provided in the report. The second periodic report covered a 10-year period, but many questions had been left unanswered.

34. The report gave very cursory treatment to the implementation of article 6 of the Covenant and made no reference to murders, disappearances and extrajudicial executions. The Committee needed to know what had happened, and who had been involved, whether the Government, paramilitary groups, or the FMLN. In particular, information was needed about the death squads, whose victims numbered in the tens of thousands. He wondered how effective the new commission established to investigate the activities of the death squads would prove, particularly under the amnesty law, it would not be able to carry out all types of investigations. A number of recent incidents seemed to suggest that illegal activities by such groups were still taking place. He had information that the human rights situation had deteriorated greatly since the signing of the peace agreement and that certain murders were being attributed to irregular groups similar to the death squads. Unless the truth were established, and the guilty punished, especially in cases where individuals had taken advantage of their positions as police officers or members of the armed forces, they would think that they could act with impunity in perpetrating torture and death.

35. The same considerations applied to the information provided on article 7 of the Covenant. He asked whether El Salvador had merely signed, or had also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and whether the Convention had become part of the law of the nation; and what measures were being taken to investigate reports of torture, to re-educate members of the security and armed forces, and to change the methods used by the armed forces.

36. The representatives of El Salvador had said nothing about the application of article 9 of the Covenant during all the years of war. One of the great problems of Salvadorian legislation during the reporting period had been that cases of lengthy detention had been permitted. Long periods of detention during which detainees were not able to contact their families or lawyers could amount to a legalization of disappearances. For example, Decree No. 582 of December 1980 allowed detention for more than six months without notification. The information provided in paragraphs 146 onwards was contradictory. He asked whether the police were restricted in providing information to the Department for Information Concerning Detained Persons and whether members of the Department were able to visit army barracks which was one place where prisoners might be held.

37. Round-ups of criminals had often been used as a means of detaining political opponents and recruiting soldiers for the army; he asked whether such round-ups still took place and what the situation had been during the war years.

(Mr. Aguilar)

He was surprised that only four paragraphs (paras. 171 to 175) were devoted to political crimes and that nothing was said about the application of article 10 during the 12 years of war.

38. Mrs. HIGGINS recalled that the Peace Agreement had called for a sifting out of human rights violators from the armed forces and the replacing of three units of the security forces by a national force. It appeared, however, that the issue of paramilitary personnel had not been addressed and quite a few of them had entered the new civilian police force. She asked what was being done to screen out undesirable elements from the police force.

39. On the subject of death squads, it was her understanding that the commission established to investigate the activities of death squads had the authority to investigate politically motivated offences which had taken place after 1992. Accordingly, the onus was still on the Government of El Salvador to look into the activities of death squads prior to that date. It was her impression that the Government was still not investigating the killings with any great vigour. She asked how the problem of unravelling the truth was being addressed in respect of the death squads.

40. She asked whether reports that the information on the register of the Department for Information concerning detained persons had not been made available to the Procurator for the Protection of Human Rights, were true and, if so, why that information was being withheld. Finally, she asked why there were separate prisons for homosexuals and for members of the armed forces.

41. Mr. LALLAH said that El Salvador's perspective on article 6 was not really appropriate for a country with so many missing and dead persons; some information needed to be provided and, at the very least, approximate figures on the numbers of people concerned.

42. The representative of El Salvador had said that the death penalty had been abolished for civilian offences; however, paragraphs 102 and 122 of the report referred to the imposition of the death penalty for certain civilian offences, and paragraph 122 referred to commutations of death penalties up to 31 May 1992. He therefore asked when the death penalty had been abolished for civilian offences, and pointed out that although section II (c) of the list of issues requested very specific information, none had been provided.

43. Mr. BRUNI CELLI, noting, with respect to article 7 of the Covenant, that article 27 of the Constitution of El Salvador prohibited inter alia life imprisonment and any form of torture, said that there was a vast difference between intention and actual practice. Since El Salvador was just emerging from 10 years of war and violence, he wished to know whether cases of torture had been reported, whether the victims of such torture had been guaranteed the rights provided for under article 13 of the Covenant and what action had been taken to investigate, deal with such cases and prevent their recurrence. Any information on specific programmes designed to educate the armed forces and police regarding the need to refrain from the use of torture and other cruel practices would also be welcome.

44. Mr. BAN asked how many death sentences had been executed over the last couple of years. With respect to paragraph 127 of the report, while prison staff were liable to sanctions for offences relating to torture, the report was silent on legislation concerning torture committed by the police and military personnel. He wondered whether they were subject to the same legislation as prison officials and whether the latter were subject to military or civil law. While the establishment of the Department for Information concerning Detained Persons had probably been in response to the State's concerns over the massive violations of human rights during the 10 years of war and turbulence, he wondered whether pouring money and manpower into that Department, the Prisons Inspectorate and the Office of the Judge Advocate was a wise investment.

45. Mr. PRADO VALLEJO said that while the Department for Information Concerning Detained Persons was a very good initiative, the procedures for administrative detention were still too broad. Moreover, laws were not being adequately applied. According to the Committee on Human Rights of El Salvador, there had been 256 extrajudicial executions in 1992 and 308 in 1993; the ONUSAL report for the period May to July 1993 had indicated a 30 per cent increase in violence. Most cases of violence and extrajudicial executions had been attributed to the national police and armed forces. In that connection, he wondered whether the reports of executions and violence had been investigated, and whether any systems or safeguards were being established to address the problem.

46. Mrs. CHANET asked whether the military regulation requiring subordinate officers to obey, at all times, the orders from their superiors, had been abolished as recommended by the Commission on Truth.

47. Mrs. EVATT, referring to paragraph 170 (f) of the report, asked why homosexual prisoners had to be subjected to treatment to modify their behaviour and wondered whether such a practice would not be considered discriminatory and incompatible with their freedom of choice of sexual identity.

48. Mr. MELENDEZ (El Salvador) said that as many of the Committee's additional questions with respect to section II had political overtones and were sensitive, he would prefer to consult with his country's authorities and respond to them the following day.

49. It was so decided.

Non-discrimination and equality of the sexes, freedom of opinion and expression, right to participate in the conduct of public affairs, and rights of persons belonging to minorities (articles 3, 18, 19, 25 and 27 of the Covenant) (section IV of the list of issues)

50. The CHAIRMAN read out section IV of the list of issues concerning the second periodic report of El Salvador, namely: (a) clarification of the measures that had been taken and the results achieved, to remove or reduce the remaining inequalities between men and women; (b) additional information on the relevant regulations and procedures under which censorship was exercised; (c) factors or difficulties hampering the implementation and enjoyment of the rights under article 27 of the Covenant; and (d) indigenous or other minority groups, if any, represented in the Legislative Assembly, local councils, national institutions and the Salvadorian administration.

51. Ms. VILLALTA (El Salvador) said, with respect to section IV (a), that many measures had been introduced to reduce the remaining inequalities between men and women. Women had the same right to form professional associations and trade unions as men and were even entitled to labour benefits that were not available to men; they were exempted, for instance, from working in dangerous conditions and enjoyed reduced working hours. Legal inequalities between spouses had been abolished in 1950 and, under the current legislation, women could keep their maiden name. Women also occupied a number of senior professional positions in the Government, universities and the judiciary. Concerning section IV (b), under article 6 of the Constitution, public entertainment was subject to censorship. A body on public entertainment on radio and television had been established to censor such things as pornographic films. Latin America was still relatively conservative compared to some other cultures, and movies were classified for different age groups. Articles 211 and 212 of the penal code dealt with offences against public morals, especially obscene exhibitions, pornography and prostitution.

The meeting rose at 6.05 p.m.